

LAW OFFICES OF
DRATEL & MYSLIWIEC

2 WALL STREET
3rd Floor
NEW YORK, NEW YORK 10005

TELEPHONE (212) 732-0707
FACSIMILE (212) 571-3792
www.dratelmys.com

JOSHUA L. DRATEL
AARON MYSLIWIEC

—
LINDSAY A. LEWIS

STEVEN WRIGHT
Office Manager

April 19, 2013

BY ECF

The Honorable William F. Kuntz II
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *United States v. Mohammad Ajmal Choudhry,*
13 Cr. 150 (WFK)

Dear Judge Kuntz:

This letter represents defendant Mohammad Ajmal Choudhry's reply to the government's April 8, 2013, letter opposing Mr. Choudhry's bail application. As detailed below, and in my April 3, 2013, letter in support of the application, Mr. Choudhry is neither a risk of flight nor danger to the community.

This reply presents additional facts, including the transcripts (received from the government) of the recorded telephone conversations between Mr. Choudhry and his daughter, Amina, as well as a response to certain assertions by the government with respect to its claim that Mr. Choudhry presents a risk of flight.

I. *Additional Facts Relating to the February 25, 2013, Homicides in Pakistan*

A. *The Affidavits from Zameer Abbas*

Attached hereto as Exhibits 1 and 2 are two Affidavits, dated April 3, 2013, and April 17, 2013, respectively, from Pakistan by Zameer Abbas,¹ who survived the February 25, 2013,

¹ As set forth in my April 3, 2013, letter, at 10, the police report from the February 25, 2013, interview of Rukhsana Kausar, the widow of Mohammad Ashgar, killed that day in Gujrat,

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assault in Gujrat, Pakistan that resulted in the deaths of Mohammad Ashgar and Mahida (Mr. Ashgar's daughter). Zameer Abbas was driving the motorcycle on which Mr. Ashgar and Mahida were passengers at the time they were killed. *See* Exhibit 1, at ¶ 2. *See also* April 3, 2013, letter from Joshua L. Dratel, Esq., at 11.

Zameer Abbas's April 3, 2013, affidavit swears that Javed Iqbal, Ehsan Ullah, Shahid Iqbal, and Mazhar Iqbal – four persons named by Ruhksana Kausar, Mr. Ashgar's widow, as participating in the shooting – “were not present at the place of occurrence and they not fir[e] out, they are innocent person.” Exhibit 1, at ¶3. Thus, Zamir Abbas's first-hand account directly disputes Ms. Kausar's. *See also* April 3, 2013, letter from Joshua L. Dratel, Esq., at 8. As a result of that affidavit, upon information and belief those four persons are no longer suspects in the February 25, 2013, shootings.

Zameer Abbas's April 17, 2013, Affidavit (Exhibit 2), attests that Mohammad Akmal (Mr. Choudhry's brother, who was named as an assailant by Ms. Kausar) “was neither present on occurrence place nor he did any firing[]” during the fatal February 25, 2013, assault in Gujrat on Mr. Ashgar and his daughter. Zameer Abbas also notes that he was a close relative of the deceased. Exhibit 2, at ¶ 2.

B. *The Affidavit from Manzoor Ahmed*

The April 15, 2013, Affidavit from Manzoor Ahmed, attached hereto as Exhibit 3, states that he is a school bus driver in Pakistan. *See* Exhibit 3, at ¶ 2. Mr. Ahmed's Affidavit further states Ms. Kausar's daughter – with whom she claimed to be walking when she purportedly witnessed the February 25, 2013, shootings – was aboard that bus, returning from school to home, when Mr. Ahmed was advised by radio transmission that the shooting had occurred. *Id.*, at ¶¶ 3-5. Mr. Ahmed proceeded to drive Ms. Kausar's daughter to her home.

Thus, contrary to her claims to the Pakistani police (reflected in the police report attached as Exhibit 9 to my April 3, 2013, letter), Ms. Kausar was *not* walking her daughter home from school when the shooting occurred.² Consequently, given Mr. Ahmed's Affidavit as well as the

Pakistan, lists the name as *Zabir* Abbas. However, Mr. Abbas himself executed his affidavit as *Zamir* Abbas.

² The government's letter, at 4, refers to a Pakistani police report. However, the government did not provide that document. It is respectfully submitted that the government should produce that police report if it is different than the report provided as Exhibit 9 to my April 3, 2013, letter.

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exoneration of at least four of the persons named by Ms. Kausar as participating in the shootings, Ms. Kausar's statement to the police is devoid of any credibility.³

C. *The Recorded Conversations Between Mr. Choudhry and His Daughter Amina*

At the April 9, 2013, status conference, the government produced the audio recordings of the six recorded telephone conversations between Mr. Choudhry (and other family members) and his daughter Amina. Review of those conversations, and the draft transcripts provided by the government,⁴ demonstrate that those recordings are insufficient to justify detention for Mr. Choudhry.

For example, during those conversations:

- Mr. Choudhry repeatedly denies involvement in the homicides, or in the prior shooting reported by Mr. Ashgar (and addressed in my April 3, 2013, letter, at 7-12). *See* Tr. 2/15/13 at 4; Tr. 2/20/13C at 4; Tr. 2/25/13 at 3-5;⁵
- Amina persistently raised the subject of what Mr. Choudhry will do in Pakistan despite his denials. *See* Tr. 2/15/13 at 3, 5; Tr. 2/20/13A at 3-4; Tr. 2/20/13B at 4-5; Tr. 2/21/13 at 3, 5, 12; Tr. 2/25/13 at 5-6, 8-9;
- Mr. Choudhry notes that others in Pakistan with motivation to kill Mr. Ashgar have exploited the earlier accusations (by Mr. Ashgar) against Mr. Choudhry's family, with the knowledge that the homicides would be blamed on Mr. Choudhry and his family. *See* Tr. 2/25/13 at 5, 8;

³ While the government, in its April 8, 2013, letter, at 8 n.7, casts aspersions on the veracity of the affidavits submitted with my April 3, 2013, letter, upon information and belief those affiants are prepared to appear at the U.S. Embassy in Pakistan and testify to the substance of their affidavits.

⁴ The government's April 8, 2013, letter quoted at length from some of the transcripts, but did not include them as Exhibits. They are submitted separately under seal because they are draft transcripts protected by a stipulation between the parties. I have spoken with Assistant United States Attorney Amanda Hector, and the government consents to their provision to the Court for purposes of the bail determination.

⁵ "Tr." refers to draft transcripts of recorded telephone calls which occurred on the date noted.

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- Amina admits that no one has told her she will be harmed, but that she “know[s] it on her own.” *See* Tr. 2/20/13C at 5;
- Amina did not raise with her father or her sisters any opposition to her marriage to Mr. Babar until after the wedding. *See* Tr. 2/21/13 at 8-9;
- Mr. Choudhry reminds Amina that everything with respect to her marriage to Mr. Babar was done with her consent. *See* Tr. 2/21/13 at 9;
- Mr. Choudhry opposed Amina marrying Shujat Abbas, and was agreeable to her divorce from Mr. Babar as long as she did not marry Abbas. *See* Tr. 2/21/13 at 4, 8;
- Mr. Choudhry did not care whether Mr. Babar was granted a visa to the U.S., as he recognized that Amina’s relationship with Mr. Babar was likely finished. *See* Tr. 2/21/13 at 10-11; and
- Mr. Choudhry states that Mr. Ashgar’s widow had made false allegations regarding who was present at and responsible for her husband’s (and daughter’s) murder. *See* Tr. 2/25/13 at 9-10.

As a result, the full context of the recorded conversations presents alternative conclusions to those proffered by the government, and do not permit a conclusion that detention is necessary, and/or that Mr. Choudhry presents a danger to the community. *See also* my April 3, 2013, letter, at 12 (setting forth five possible inferences). Indeed, the government has not articulated any specific reason why Mr. Choudhry, if released on bail under strict supervision in the Eastern District, would present any danger to the community in the Eastern District, or could affect events in Pakistan.

II. *Mr. Choudhry Does Not Present a Risk of Flight*

In addition to the reasons set forth in my April 3, 2013, letter, at 3-7, regarding why Mr. Choudhry does not present a risk of flight, he does not have anywhere to go should he flee the U.S. He cannot return to Pakistan because certainly the Pakistani authorities would seek to question him, and maintain supervision over him, until the investigation of the February 25, 2013, homicides is concluded. Also, Mr. Choudhry would be far more vulnerable to reprisals in Pakistan than he would here in the U.S.

In addition, upon information and belief, it is difficult to obtain a replacement Pakistani

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passport, as the consulate requires an official police report noting the report of the lost or stolen passport that is being replaced.

Thus, in addition to Mr. Choudhry's firm roots in Brooklyn, the lack of any viable alternative for him as long as the homicide investigation remains unresolved, eliminates the risk of flight.

III. *Co-Signers and Property Available for Bail*

Upon information and belief, this week many of the available co-signers – as many as 20 persons – have been interviewed by Pre-Trial Services to determine their suitability. In addition, some are willing to post property to secure Mr. Choudhry's release.

Respectfully submitted,

Joshua L. Dratel

JLD/
Encls.

cc: Margaret E. Gandy
Amanda Hector
Assistant United States Attorneys